result the importation of much of the English law of evidence, — a result which, by the way, has not followed from the introduction of the jury on the Continent. While the English law shows an occasional trace of Scotch influence, the reverse is very much more common and apparent, and one may look for further evidence of it in the future.

FIXTURES — VENDOR *v.* PRIOR MORTGAGEE. — The Court of Appeal last month, in the case of *Gough* v. *Wood & Co.*, 10 Times L. R. 318, decided that an agreement between the vendor of a fixture and a lessee that the fixture should remain the property of the vendor until wholly paid for, was a bar to the right of the mortgagee of the lease. The mortgage in this case was executed before the annexation of the chattel, and neither the mortgagee had notice of the agreement nor the vendor of the mortgage. The court followed the decision of North, J., in *In re Maryport Hematite Iron Co.* (1892), 1 Ch. 415, — a case precisely similar to this, except that the mortgage there included machinery, etc., "hereafter to be acquired." Weight was also put upon the case of *Sanders* v. *Davis*, L. R. 15 Q. B. D. 218, where the mortgage by a lessee of chattels annexed by him was held superior to a prior mortgage of the premises by the lessors.

It is law both in England and this country that fixtures annexed by the mortgagor, whether before or after the mortgage, go to the mortgagee (*Walmsley* v. *Milne*, 7 C. B. N. S. 115; *McLaughlin* v. *Nash*, 14 Allen, 136; *Davenport* v. *Shants*, 43 Vt. 546; *Brennan* v. *Whitaker*, 15 Ohio St. 446), and this rests upon the obviously good reason that a mortgagor, knowing the mortgagee's title in the property, may be said to have chosen to add to its value for his own purposes while in possession, and in view of his own equity of redemption. The case of real difficulty is the one where the mortgagee's interest is not harmed, and the annexation is after the mortgage by an ignorant vendor. It may be said that the vendor, although ignorant of the mortgage, has yet consented to make his property part of the soil, and so must be content to abide the consequences; and there are cases in line with such a result, *Clary* v. *Owen*, 15 Gray, 522 (and compare the cases of partners taken in after the mortgage, *Ex parte Cotton*, 2 M. D. & D. 725; *Cullwick* v. *Swindell*, L. R. 3 Eq. 249). Or one may take the view of the present case, and give the vendor his property, allowing the privity between him and the mortgagor to overbalance his act of annexation, when that is in ignorance of the mortgage. *Davenport* v. *Shants*, *supra*. The reasons given in the case under discussion, however, that the mortgagee may be assumed to have consented to the annexation, seem a little hard to reconcile with the law that forfeits to the mortgagor his own fixtures. If the mortgagee is to consent to a third party's putting fixtures on the land for the use of the mortgagor, why cannot he be said to consent to the mortgagor's putting his own upon it? The reason would seem to be better stated by the justice of the case, that the mortgagee is not hurt by the removal, and the innocent vendor's property is not lost to him.

With the exception of the case of *Davenport* v. *Shants*, there does not seem to be any authority precisely in point, for it is submitted that *In re Maryport Co.*, where the mortgage covered all to be acquired, goes further, and is really unfair to the mortgagee, whom the law wishes particularly to protect, not putting him in the position of landlord to tenant; while *Sanders* v. *Davis*, *supra*, also relied on by the Court, is really

no more than a tenant's right to fixtures, whether he holds under the mortgagor in possession or the mortgagee. The present case is, however, a good one apparently, and will, as Lindley, L. J., says, tend to reasonable security in dealing with mortgagors in possession, which could hardly exist if one was likely to have one's property confiscated, and be left to an action against a mortgagor who has been sold out, often not the solidest of debtors.

AN UNFORTUNATE CREDITOR. — A case in the last Texas Reports has brought up squarely the question whether two joint debtors, by agreeing with each other to become respectively principal and surety, and by notifying the creditor of their agreement, may compel him to respect its terms, and to treat them thereafter as principal and surety. *Hall* v. *Johnson*, 24 S. W. Rep. 861, was the case of a continuing partner who agreed to indemnify his retiring copartner against payment of the firm debts; notice of this arrangement was given to the creditor. The majority of the court held that an extension of time given to the continuing partner discharged the retiring copartner, Fisher, C. J., dissenting. Each side marshalled its authorities (many of which are collected in 17 Amer. & Eng. Enc. Law, 1131) in full array, and the dissent went into a more extended examination of the principles involved.

The English courts, not content with the theoretical difficulty of the question, have still further complicated the question by disputing the effect of the decision in *Oakeley* v. *Pasheller*, 10 Bligh (N. S.), 548, in the House of Lords in 1836. In *Swire* v. *Redman*, 1 Q. B. D. 536, the court held that notice to the creditor of the new arrangement did not oblige him to treat the debtors as principal and surety, and said that *Oakeley* v. *Pasheller* went on the ground that the creditor had virtually assented to the new arrangement. Lord Justice Lindley, in his work on Partnership (5th edition, p. 252), considered this view of *Oakeley* v. *Pasheller* to be correct; but now in *Rouse* v. *Bradford Banking Co.*, 38 Sol. Law Jour. 270, he says that *Swire* v. *Redman* took the wrong view of *Oakeley* v. *Pasheller*, and that the law is settled the other way. A. L. Smith, L. J., agreed with him, and Kay, L. J., took the contrary view.

These cases have tied the Gordian knot so tight that it needs a decision of the House of Lords to cut it; but in the United States the case may be decided on principle. If we free the question from all analogy as to the rights of mortgagees who have notice of a conveyance by the mortgagor, and of a covenant by the grantee to pay the mortgage debt, it is simply this: Can two joint debtors agree to become principal and surety, and compel the creditor to treat them as such? Surely not. The creditor has a legal right, — how can his debtors force him to relinquish it? Generally the position of his debtors will not be a matter of importance to a creditor, and therefore it will not seem so unjust that equity, in order "to do a great right," should do a "little wrong," by depriving him of his theoretical right. But it may be very material to him. Suppose he thinks that the surest way to secure full payment of the debt is to take the time note of one of the debtors. If they are still joint debtors he may safely do this, and still hold the other; if they are principal and surety he must take the risk of being able to prove that he expressed himself as "reserving all rights against the surety," — a risk which was not part of his original contract, but which is now forced upon him against his will. It